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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

YUN-GUI CAI,

Plaintiff,

No. 05-03175 EDL

v.

FISHI CAFÉ, INC, et al.,

Defendants.

**ORDER GRANTING IN PART
PLAINTIFF'S MOTION TO SHORTEN
TIME AND SETTING BRIEFING
SCHEDULE**

On August 14, 2007, Plaintiff filed a motion to shorten time to hear his motion to compel so that Plaintiff can use the information sought in his motion to compel in his opposition to Defendant's Motion for Summary Judgment which is due on August 21, 2007. Defendant does not oppose the request to shorten time, and has filed a cross-motion to compel.

There is no good cause to hear these motions prior to August 21, 2007. If Plaintiff believes that he needs additional discovery before filing its opposition to certain portions of Defendants' summary judgment motion, the proper approach is to utilize the procedure in Federal Rule of Civil Procedure 56(f). See California v. Campbell, 138 F.3d 772, 779 (9th Cir. 1998) (holding that the party seeking relief under Rule 56(f) "must show (1) that they have set forth in affidavit form the specific facts that they hope to elicit from further discovery, (2) that the facts sought exist, and (3) that these sought-after facts are 'essential' to resist the summary judgment motion."). However, any portions of the motion for summary judgment that Plaintiff can oppose without additional discovery should be addressed on the existing briefing schedule.

The Court will hear Plaintiff's Motion to Compel and Defendants' Cross-Motion to Compel on September 4, 2007 at 2:00 p.m. Defendants have already filed an opposition to Plaintiff's motion in which they assert that the motion is moot because the documents sought have already been produced. If Plaintiff decides to proceed with his motion, he shall explain in the reply

1 why he believes the motion is not moot. Plaintiff's reply shall be filed no later than August 23,
2 2007. Also by August 23, 2007, Plaintiff shall file an opposition to Defendant's Cross-Motion to
3 Compel. Defendant may file a reply to Plaintiff's opposition no later than August 28, 2007.

4 IT IS SO ORDERED.

5 Dated: August 20, 2007

Elizabeth D. Laporte
6 ELIZABETH D. LAPORTE
7 United States Magistrate Judge